

MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI, ex rel. FAMILY SUPPORT DIVISION – CHILD
SUPPORT ENFORCEMENT, and TRACY L. STUDE,

Respondents,

v.

TERRY EUGENE LANE,

Appellant.

DOCKET NUMBER WD70715

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 8, 2010

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Christine T. Sill-Rogers, Judge

APPELLATE JUDGES

Division One: Karen King Mitchell, Presiding Judge, and Lisa White
Hardwick and Cynthia L. Martin, Judges

ATTORNEYS

James F. Kanatzar, Jackson County Prosecuting Attorney
R. Benjamin Winfrey and Raoul C. Stitt, Assistant Prosecuting Attorneys
Kansas City, MO

Attorneys for Respondent,

Terry Eugene Lane
Lee's Summit, MO

Appellant, *pro se*.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, ex rel. FAMILY)
SUPPORT DIVISION – CHILD)
SUPPORT ENFORCEMENT, and)
TRACY L. STUDE,)
)
Respondents,)
v.)
)
TERRY EUGENE LANE,)
)
Appellant.)

WD70715

Jackson County

Before Division One Judges: Karen King Mitchell, Presiding Judge, and
Lisa White Hardwick and Cynthia L. Martin, Judges

The State of Missouri, ex rel. Family Support Division – Child Support Enforcement (“Division”), and Tracy L. Stude (collectively, “Respondents”) applied to the Circuit Court of Jackson County for a contempt citation against Appellant Terry Eugene Lane, for failure to pay child support. The Commissioner held a hearing on Respondents’ application. At the hearing, the Commissioner found Lane to be in contempt. The Commissioner entered a written order, finding Lane in contempt and remanding him to the department of corrections, but staying the execution of the judgment on the condition that he pay \$50 a month to purge his contempt. Lane did not pay as ordered, and the Commissioner subsequently lifted the stay of execution and remanded Lane to the department of corrections. However, at no point did the Commissioner or the Division inform Lane that, if he were found to be indigent, counsel would be provided for him, and no counsel appeared on Lane’s behalf.

REVERSED AND REMANDED.

Division One holds:

Except for cases of direct contempt, where the courts have the inherent authority to maintain the order, safety, and/or integrity of the courtroom and the judicial process by ordering

contemnors imprisoned immediately, the circuit court, in civil contempt actions, must either (1) predetermine that the offense is of insufficient gravity to warrant jail time; or (2) advise the defendant that he has the right to be represented by counsel and that, if found to be indigent, he has the right to have counsel appointed. *Smith v. Kintz*, 245 S.W.3d 257, 260 (Mo. App. E.D. 2008); *Hunt v. Moreland*, 697 S.W.2d 326, 329-30 (Mo. App. E.D. 1985).

In the latter case, the circuit court does not have the statutory authority to compel the public defender to represent the defendant in a civil action, *State ex rel. Sterling v. Long*, 719 S.W.2d 455 (Mo. banc 1986); *Albers v. Koffman*, 815 S.W.2d 484, 485 (Mo. App. W.D. 1991); however, the circuit court has the inherent authority to appoint members of the bar to represent the defendant. *See State ex rel. Shaw v. Provaznik*, 708 S.W.2d 337, 340 (Mo. App. E.D. 1986) (noting that the inherent power to appoint counsel exists but holding that such power cannot be used to appoint a public defender in his or her capacity *as* public defender). When neither the state legislature nor the subject county has provided a mechanism for the defense of civil contempt actions, *see Albers*, 815 S.W.2d at 485, the court's inherent power to appoint counsel appears to be the only mechanism by which an indigent defendant, facing actual imprisonment in a civil case, can be afforded his constitutionally guaranteed right to counsel. The court must use that power when the right to due process requires it. U.S. CONST. amend. XIV.

Here, Lane was never advised that, if found to be indigent, he had the right to have counsel appointed for him. Moreover, this was not a case of "direct contempt," where the court could have summarily punished Lane. As such, Lane's due process right to counsel was violated, and the circuit court's judgment must be reversed.

Opinion by: Karen King Mitchell, Judge

June 8, 2010

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